



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0351; A-1-FRL-9950-92-Region 1]

Air Plan Approval; MA; Decommissioning of Stage II Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Massachusetts Department of Environmental Protection (MassDEP). This revision includes regulatory amendments that allow gasoline dispensing facilities (GDFs) to decommission their Stage II vapor recovery systems as of January 2, 2015, and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance. This revision also includes regulatory amendments that strengthen Massachusetts' requirements for Stage I vapor recovery systems at GDFs. The intended effect of this action is to approve Massachusetts' revised vapor recovery regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2015-0351. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 9, 2016 (81 FR 12440), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of Massachusetts' revised regulations 310 Code of Massachusetts Regulations (CMR) 7.00, *Air Pollution Control: Definitions*, 310 CMR 7.24(3), *Distribution of Motor Vehicle Fuel*, 310 CMR 7.24(4), *Motor Vehicle Fuel Tank Trucks*, and 310 CMR 7.24(6), *Dispensing of Motor Vehicle Fuel*. These regulations had been amended to allow the decommissioning of Stage II vapor recovery systems and to strengthen Stage I vapor recovery requirements. The SIP revision was submitted by the MassDEP on May 5, 2015 and also included a demonstration that the decommissioning of Stage II vapor recovery systems at gasoline dispensing facilities is consistent with the Clean Air Act and EPA guidance.

A detailed discussion of Massachusetts' May 5, 2015 SIP revision and EPA's rationale for proposing approval of the SIP revision were provided in the NPR and will not be restated in this notice, except to the extent relevant to our responses to public comments we received on our proposal.

II. Response to Comments

EPA received one comment on the NPR from the Vapor Recovery Association. That comment is summarized below with EPA's response.

Comment: The commenter opposes EPA's proposed approval of Massachusetts' revised Stage II vapor recovery regulation. The commenter believes that eliminating Stage II vapor recovery systems at GDFs and relying solely on Onboard Refueling Vapor Recovery (ORVR)

systems located within the vehicles to mitigate refueling emissions will have a negative impact on air quality; cause adverse health impacts to motorists, GDF employees, and members of the community; and result in a severe negative burden in Environmental Justice (EJ) areas in Massachusetts.

Furthermore, the commenter asserts that MassDEP's rationale for decommissioning Stage II vapor recovery systems is not based in science and that it can be mathematically shown that emissions will be increased rather than decreased as a result of the elimination of the Stage II vapor recovery program. However, the commenter did not submit any calculations in support of its claims of the increased emissions, health impacts, and the impacts on EJ areas that the commenter alleges would result from decommissioning Stage II vapor recovery systems at GDFs in Massachusetts. Nor did the commenter specify what specific aspects of the technical analyses conducted by the MassDEP in support of its SIP revision were scientifically unsupportable.

Finally, the commenter believes that in terminating the Massachusetts Stage II vapor recovery program, the MassDEP is not adhering to its mission statement. The commenter also believes that the technical details of fuel storage tank evaporative losses and the alleged significant increase in refueling emissions impacts caused by Massachusetts' removal of Stage II vapor recovery, should have received more thought, analysis and quantification. Again, however, the commenter did not provide specific criticism of the analyses conducted by MassDEP, did not identify any specific aspects of those analyses that the commenter believes are incorrect, and did not assert any alternative specific results or conclusions that the commenter believes would result if the issues were evaluated according to the commenter's unspecified preferred alternative methodology.

Response: EPA disagrees with the Vapor Recovery Association's assertion that there will be significant increased emissions from this action. Massachusetts' May 5, 2015 SIP revision

contains a Clean Air Act (CAA) section 110(l) demonstration which was performed in accordance with EPA's final rule determining that ORVR is now in widespread use in the national motor vehicle fleet (77 FR 28770, May 16, 2012) and with EPA's "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures" (EPA-457/B-12-001, August 7, 2012), hereafter, EPA's August 7, 2012 Guidance (a copy of this guidance has been placed in the public docket for this action).

The Massachusetts rule allows GDFs to decommission Stage II systems as of January 2, 2015, and requires all GDFs equipped with Stage II vapor recovery systems to decommission their Stage II systems by January 2, 2017 (by the end of 2016). As discussed in the NPR, Appendix Table A-1 of EPA's August 7, 2012 Guidance illustrates that by the end of 2016, approximately 85% of the vehicles in the national motor vehicle fleet will be equipped with ORVR. The number of ORVR-equipped vehicles in Massachusetts will likely be even higher due to Massachusetts having a more accelerated motor vehicle fleet turnover when compared to the national motor vehicle fleet.¹ Appendix Table A-1 also illustrates that by the end of 2016, about 89% of the gasoline dispensed nationally will be to ORVR-equipped vehicles, which is also likely to be higher in Massachusetts due to a newer motor vehicle fleet. At that point in time, since a vast majority of Massachusetts vehicles being refueled at gasoline dispensing facilities will be equipped with ORVR systems, the ORVR systems will be controlling the volatile organic compound (VOC) emissions, making Stage II vapor recovery systems a redundant, and potentially incompatible, emissions control technology in Massachusetts.

¹ *Air Program Support for Stage I and Stage II Programs in Massachusetts Final Report*, Eastern Research Group, Inc. and de la Torre-Klausmeier Consulting, December 12, 2012, includes an analysis of vehicle registration data, from the Massachusetts motor vehicle inspection and maintenance program database, illustrating that 76% of motor vehicles inspected in 2011 throughout Massachusetts had ORVR controls. This is much more accelerated than EPA's end of 2011 calendar year national estimate that 67.1% of vehicles in the national motor vehicle fleet were equipped with ORVR.

Therefore, removing the Stage II systems is not expected to result in a significant emissions increase, and is actually expected to avoid emissions increases resulting from the incompatibility of some Stage II systems with ORVR controls.

EPA also disagrees with the commenter's assertion that the alleged increase in emissions resulting from the removal of Stage II controls will result in a large increase in adverse health impacts to motorists, GDF employees, and members of the community. EPA's August 7, 2012 Guidance states that "EPA believes it is reasonable to conclude that the incremental emissions control that Stage II achieves beyond ORVR is *de minimis* if it is less than 10 percent of the area-wide emissions inventory associated with refueling highway motor vehicles." As noted in the NPR, Massachusetts appropriately calculated the increase in refueling-associated emissions from the decommissioning of Stage II systems in 2013 as 5.2 percent of that inventory, thus meeting this *de minimis* threshold. As also noted in the NPR, the increase in emissions from Stage II system decommissioning calculated by Massachusetts for 2013 (463 tons of VOC) is only about 0.3 percent of the total anthropogenic VOC emissions in Massachusetts (see EPA's 2011 National Emissions Inventory database Version 2 at www.epa.gov/ttn/chief/net/2011inventory.html). Also, as explained in EPA's ORVR rulemaking and in EPA's August 7, 2012 Guidance, these foregone emissions reductions in the near term continue to diminish rapidly over time as ORVR phase-in continues. Therefore, since the *de minimis* criteria discussed in EPA's August 7, 2012 Guidance have been met, EPA is approving Massachusetts' SIP revision.

Furthermore, we note that Massachusetts' revised 310 CMR 7.24(3) regulation also includes new Stage I vapor recovery requirements that will lead to additional emission reductions. Specifically, the regulation requires GDFs to upgrade their Stage I vapor recovery systems to Stage I Enhanced Vapor Recovery (EVR) systems certified by the California Air

Resources Board (CARB) or a Stage I vapor recovery system composed of EVR system components (Stage I EVR component systems). The upgrade to Stage I EVR systems or Stage I EVR component systems is required upon facility start-up for facilities beginning operation or installing a fuel storage tank as of January 2, 2015. In addition, as of January 2, 2015, any component of a pre-existing Stage I vapor recovery system that is replaced is required to be replaced with a CARB-certified Stage I EVR component. The Massachusetts regulation further requires that all Stage I systems be CARB-certified Stage I EVR systems or Stage I EVR component systems by January 2, 2022. CARB-certified Stage I EVR systems have been certified to achieve a 98 percent reduction in VOC emissions, as compared to 95 percent for pre-EVR Stage I systems. Thus, when pre-EVR Stage I systems in Massachusetts are replaced with CARB-certified Stage I EVR systems, a greater emission reduction will be achieved. Also, when a component of a pre-EVR Stage I system is replaced with a CARB-certified Stage I EVR component, a somewhat greater reduction is expected to be achieved. These additional reductions will further mitigate any temporary declining emissions increases, which are already *de minimis*, resulting from the removal of Stage II equipment.

Although the commenter generally asserted that MassDEP's analyses and demonstrations were not scientifically supported and that emissions increases could be mathematically shown to result from the removal of Stage II equipment, the commenter provided no information, data, or analytical critiques to support these allegations. The commenter has therefore not raised with reasonable specificity any objections to the underlying analyses and demonstrations supporting EPA's proposed approval of Massachusetts' SIP revision. Consequently, it is not possible for EPA to respond to any specific criticisms that the commenter may have had of the MassDEP's analyses, other than to reiterate that EPA concludes that Massachusetts has conducted its

demonstration consistently with EPA's applicable regulations and guidance under the Clean Air Act, as described and evaluated in detail in the NPR. *See*, 81 FR at 12442-43.

Finally, EPA disagrees with the comment that MassDEP is not adhering to its mission statement and that an insufficient amount of thought, analysis, and quantification was provided by MassDEP regarding the impacts of decommissioning Stage II vapor recovery systems in Massachusetts. MassDEP's analysis was conducted in accordance with EPA's ORVR rulemaking and EPA's August 7, 2012 Guidance. In fact, prior to the issuance of EPA's August 7, 2012 Guidance, MassDEP hired independent consultants to conduct an analysis on the emissions impacts of the proposed changes to the Massachusetts Stage I and Stage II vapor recovery programs.² One of the noteworthy results presented in the consultant's report was the analysis of whether removal of Stage II controls would result in disproportionate air quality impacts in EJ communities. The consultant's analysis determined that, previous to the April 2012 point at which EPA determined ORVR to have become in widespread use, EJ communities had a slightly lower proportion of ORVR-equipped vehicles (73% of the motor vehicle fleet) than non-EJ communities (77% of the motor vehicle fleet), based on 2011 data in Massachusetts. Although this shows that continuing to operate Stage II systems in Massachusetts EJ communities would not as quickly become redundant and potentially incompatible with ORVR controls as in non-EJ Massachusetts communities, Appendix Table A-1 of EPA's August 7, 2012 Guidance illustrates that only about 67% of the national motor vehicle fleet consisted of ORVR-equipped vehicles in 2011, which is still less than the 73% rate for EJ communities in Massachusetts. The commenter has provided no information indicating that the rate of fleet turnover and the rate at which gasoline is dispensed to ORVR equipped vehicles in Massachusetts EJ communities has subsequently fallen behind the corresponding national rates

² *Air Program Support for Stage I and Stage II Programs in Massachusetts Final Report*, Eastern Research Group, Inc. and de la Torre-Klausmeier Consulting, December 12, 2012.

they were exceeding in 2011. Therefore, in response to the comment, EPA has no reason to believe that the emissions impact of decommissioning Stage II vapor recovery systems in EJ communities in Massachusetts is more significant than that discussed in EPA guidance as an acceptable national average impact.

III. Final Action

EPA is approving Massachusetts' May 5, 2015 SIP revision. Specifically, EPA is approving, and incorporating into the Massachusetts SIP, the following amended Massachusetts regulations: 310 CMR 7.00, "Air Pollution Control: Definitions;" 310 CMR 7.24(3), "Distribution of Motor Vehicle Fuel;" 310 CMR 7.24(4), "Motor Vehicle Fuel Tank Trucks;" and 310 CMR 7.24(6), "Dispensing of Motor Vehicle Fuel." EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with any applicable requirement concerning National Ambient Air Quality Standards attainment and reasonable further progress or with any other applicable requirement of the Clean Air Act.

Massachusetts' May 5, 2015 SIP revision satisfies the "comparable measures" requirement of CAA section 184(b)(2), because as stated in EPA's August 7, 2012 Guidance, "the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis*, incremental loss of area-wide emissions control." As noted in the NPR, Massachusetts' SIP revision meets the *de minimis* criteria outlined in EPA's August 7, 2012 Guidance. In addition, since emissions are *de minimis*, the anti-back sliding requirements of CAA section 110(l) have also been satisfied.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Massachusetts regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov>.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2016.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart W - Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(144) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(144) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 5, 2015.

(i) Incorporation by reference.

(A) Regulation 310 CMR 7.00 entitled “Air Pollution Control: Definitions,” the definitions listed below, effective January 2, 2015, as published in the Massachusetts Register, Issue S1277, January 2, 2015:

- (1) Aboveground Storage Tank or AST;
- (2) Business Day;
- (3) California Air Resources Board (or California ARB or CARB);
- (4) Commence Operations;
- (5) Emergency Motor Vehicle;

- (6) Emergency Situation
- (7) Executive Order;
- (8) Minor Modification;
- (9) Monthly Throughput;
- (10) Motor Vehicle;
- (11) Motor Vehicle Fuel;
- (12) Motor Vehicle Fuel Dispensing Facility;
- (13) Responsible Official;
- (14) Routine Maintenance;
- (15) Stage I CARB Enhanced Vapor Recovery (EVR)
Component or EVR;
- (16) Stage I CARB Enhanced Vapor Recovery (EVR)
System;
- (17) Stage I Component Enhanced Vapor Recovery (EVR)
System;
- (18) Stage I Minor Modification;
- (19) Stage I Non-Enhanced Vapor Recovery System;
- (20) Stage I Routine Maintenance;
- (21) Stage I Substantial Modification;
- (22) Stage I System;
- (23) Stage II Minor Modification;
- (24) Stage II Routine Maintenance;
- (25) Stage II Substantial Modification;
- (26) Stage II System;
- (27) Submerged Filling;
- (28) Tank Truck;
- (29) Vacuum Assist System;
- (30) Vapor;

- (31) Vapor Balance System;
- (32) Vapor-Mounted Seal; and
- (33) Vapor-Tight.

(B) Regulation 310 CMR 7.24, “Organic Material Storage and Distribution,” the sections listed below, effective January 2, 2015, as published in the Massachusetts Register, Issue S1277, January 2, 2015:

- (1) 7.24(3) “Distribution of Motor Vehicle Fuel”;
- (2) 7.24(4) “Motor Vehicle Fuel Tank Trucks”; and
- (3) 7.24(6) “Dispensing of Motor Vehicle Fuel”.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection, dated May 5, 2015, submitting a revision to the Massachusetts State Implementation Plan.

3. In § 52.1167, Table 52.1167 is amended by adding new entries for the existing state citations for 310 CMR 7.00, 310 CMR 7.24(3), 310 CMR 7.24(4), and 310 CMR 7.24(6) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

Table 52.1167 - EPA-Approved Rules and Regulations

[See Notes at end of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
**	*	*	*	*	*	

310 CMR 7.00	Air Pollution Control: Definitions	5/5/15	[Insert Federal Register date of publication]	[Insert Federal Register citation]	144	Revises definitions that relate to Stage I and Stage II vapor recovery systems.
**	*	*	*	*	*	
310 CMR 7.24(3)	Distribution of Motor Vehicle Fuel	5/5/15	[Insert Federal Register date of publication]	[Insert Federal Register citation]	144	Revised to require Stage I Enhanced Vapor Recovery systems certified by the California Air Resources Board.
310 CMR 7.24(4)	Motor Vehicle Fuel Tank Trucks	5/5/15	[Insert Federal Register date of publication]	[Insert Federal Register citation]	144	Revised to make minor clarifying amendments.
**	*	*	*	*	*	
310 CMR 7.24(6)	Dispensing of Motor Vehicle Fuel	5/5/15	[Insert Federal Register date of publication]	[Insert Federal Register citation]	144	Revised to require the decommissioning of Stage II vapor recovery systems.
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Notes:

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.